

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 52 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SHRI AMBICA MILLS LTD.

Appearance:

MR BB NAIK instructed by MR MANISH R BHATT
for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 28/02/2001

ORAL JUDGEMENT

In this Reference, at the instance of the Revenue, three questions are referred for our opinion in respect of A.Y. 1978-79.

2. We have heard learned counsel Mr. B.B.Naik for the Revenue. Though served, none appears for Official Liquidator for the respondent-Company which is in liquidation.

3. Question No.1

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to deduction of Rs.2,01,185/- being the amount paid to M/s. Mettur Beard Shell Co. Ltd. for the user of its trade mark 'Tablised' ?"

4. Mr. Naik, learned counsel for the Revenue fairly states that the controversy raised herein is now concluded by the decision of this Court in COMMISSIONER OF INCOME-TAX v. ASHOKA MILLS LTD. (1996) 218 ITR 526, wherein this Court held that the amount paid to Mettur Beard Shell Co.Ltd. for the user of its trade-mark "Tebilized" was revenue expenditure.

5. We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the Revenue.

6. Question no.2

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim weighted deduction in respect of export promotion fees of Rs. 7,00,764/- paid to ICMF ?"

7. Mr. Naik, learned counsel for the Revenue points out that in WESTERN INDIA INDUSTRIES v. COMMISSIONER OF INCOME-TAX, (1992) 197 ITR 680, this Court held that the assessee had paid the price for purchase of rights of other parties to export goods and expenditure was incurred in India and, therefore, it would not qualify for weighted deduction under section 35B(1)(b)(iii). Mr. Naik further states that in the instant case also the amount was paid by the assessee to ICMF by way of export promotion fees and the expenditure was incurred in India.

8. In view of the above, we answer the question in the negative i.e. in favour of the Revenue and against the assessee.

9. Question no.3

"Whether, on the facts and in the circumstances of the case, (i) reimbursement of medical expenses, (2) personal accident insurance premium and (3) telephone expenses paid to Directors are not perquisites and the provisions of section 40A(5) are not applicable ?"

10. Mr. Naik, learned counsel for the Revenue submits that in view of the decision of this Court in COMMISSIONER OF INCOME-TAX v. AMBICA MILLS LTD. (1999) 236 ITR 921, the question may be answered in favour of the Revenue. However, looking to the smallness of the amounts involved, we are not inclined to go into merits of the question referred to us. We accordingly decline to answer this question.

11. The Reference stands disposed of accordingly, with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah,J.)

(patel)